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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 ALICE KZIRIAN,

12 Plaintiff,

13 v.

14 SAN DIEGO POLICE
15 DEPARTMENT,

16 Defendant.
17

Case No. 16-cv-01167-BAS(KSC)

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS***

[ECF No. 2]

18 On May 16, 2016, Plaintiff Alice Kzirian commenced this action against
19 Defendant San Diego Police Department seeking redress for defamation and
20 discrimination. (ECF No. 1.) On the same day, Plaintiff also filed a motion seeking
21 leave to proceed *in forma pauperis* (“IFP”). (ECF No. 2.) For the reasons outlined
22 below, the Court **DENIES** Plaintiff’s motion to proceed IFP.

23 Under 28 U.S.C. § 1915, a litigant who because of indigency is unable to pay
24 the required fees or security to commence a legal action may petition the court to
25 proceed without making such payment. The determination of indigency falls within
26 the district court’s discretion. *Cal. Men’s Colony v. Rowland*, 939 F.2d 854, 858 (9th
27 Cir. 1991), *rev’d on other grounds*, 506 U.S. 194 (1993) (holding that “Section 1915
28 typically requires the reviewing court to exercise its sound discretion in determining

1 whether the affiant has satisfied the statute’s requirement of indigency”). It is well-
 2 settled that a party need not be completely destitute to proceed IFP. *Adkins v. E.I.*
 3 *DuPont de Nemours & Co.*, 335 U.S. 331, 339–40 (1948). To satisfy the requirements
 4 of 28 U.S.C. § 1915(a), “an affidavit [of poverty] is sufficient which states that one
 5 cannot because of his poverty pay or give security for costs . . . and still be able to
 6 provide himself and dependents with the necessities of life.” *Id.* at 339. At the same
 7 time, however, “the same even-handed care must be employed to assure that federal
 8 funds are not squandered to underwrite, at public expense . . . the remonstrances of a
 9 suitor who is financially able, in whole or in material part, to pull his own oar.”
 10 *Temple v. Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984).

11 District courts, therefore, tend to reject IFP applications where the applicant
 12 can pay the filing fee with acceptable sacrifice to other expenses. *See e.g., Stehouwer*
 13 *v. Hennessey*, 841 F. Supp. 316, 321 (N.D. Cal. 1994), *vacated in part on other*
 14 *grounds, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995) (finding that a district
 15 court did not abuse its discretion in requiring a partial fee payment from a prisoner
 16 who had a \$14.61 monthly salary and who received \$110 per month from family).
 17 Moreover, “*in forma pauperis* status may be acquired and lost during the course of
 18 litigation.” *Wilson v. Dir. of Div. of Adult Insts.*, No. CIV S-06-0791, 2009 WL
 19 311150, at *2 (E.D. Cal. Feb. 9, 2009) (citing *Stehouwer*, 841 F. Supp. at 321); *see*
 20 *also Allen v. Kelly*, 1995 WL 396860, at *2 (N.D. Cal. June 29, 1995) (holding that
 21 a plaintiff who was initially permitted to proceed *in forma pauperis* should be
 22 required to pay his \$120 filing fee out of a \$900 settlement). Finally, the facts as to
 23 the affiant’s poverty must be stated “with some particularity, definiteness, and
 24 certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981).

25 Having read and considered Plaintiff’s application, the Court finds that
 26 Plaintiff does not meet the requirements for IFP status under 28 U.S.C. § 1915.
 27 Plaintiff is not currently employed, but she has received money in the past twelve
 28 months from “Rent payments, royalties, interest or dividends” and “Social Security,

1 disability or other welfare.” (IFP Mot. ¶ 3.) She has a checking account at Chase
2 Bank with a balance of approximately \$24,000. (*Id.* ¶ 4.) Plaintiff also owns real
3 estate valued at approximately \$550,000. (*Id.* ¶ 7.) Based on these circumstances,
4 Plaintiff has adequate funds to pay the filing fee. Therefore, the Court cannot
5 conclude that paying the court filing fees would impair Plaintiff’s ability to obtain
6 the necessities of life. *See Adkins*, 335 U.S. at 339.

7 In light of the foregoing, the Court **DENIES** Plaintiff’s application to proceed
8 *in forma pauperis* (ECF No. 2), and **DISMISSES WITHOUT PREJUDICE** the
9 Complaint. Pursuant to this order, Plaintiff is granted leave for thirty days to pay the
10 filing fee required to maintain this action pursuant to 28 U.S.C. § 1914, or to submit
11 additional documentation regarding her financial status. **IF PLAINTIFF**
12 **CHOOSES TO FILE ADDITIONAL INFORMATION REGARDING HER**
13 **POVERTY, SHE MUST ATTACH A COPY OF THIS ORDER.** Additionally,
14 Plaintiff is reminded that an IFP application is made under penalty of perjury, and
15 any false statements may result in dismissal of her claims, imprisonment of not more
16 than five years, or a fine. *See* 18 U.S.C. §§ 1621, 3571.

17 **IT IS SO ORDERED.**

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19 **DATED: May 27, 2016**

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21 **Hon. Cynthia Bashant**
22 **United States District Judge**
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